

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

REG-159929-02

RIN 1545-BB84

REMIC Residual Interests - Accounting for REMIC Net Income (Including Any Excess Inclusions (Foreign Holders)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the rules and regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations relating to the income that is associated with a residual interest in a Real Estate Mortgage Investment Conduit (REMIC) and that is allocated through certain entities to foreign persons who have invested in those entities. The regulations accelerate the time when income is recognized for withholding tax purposes to conform to the timing of income recognition for general tax purposes. The foreign persons covered by these regulations include partners in domestic partnerships, shareholders of real estate investment trusts, shareholders of regulated investment companies, participants in common trust funds, and patrons of subchapter T cooperatives. These regulations are necessary to prevent inappropriate avoidance of current income tax liability by foreign persons to whom income from REMIC residual interests is allocated. The regulations clarify the timing of income under section 860G for purposes of determining a domestic partnership's responsibility under sections 1441

and 1442 for withholding tax with respect to a foreign partner's share of REMIC net income as a result of indirectly holding a residual interest. The regulations also provide that an excess inclusion is treated as income from sources within the United States. The text of those temporary regulations also serves as the text of these proposed regulations.

DATES: Written or electronic comments and requests for a public hearing must be received by October 30, 2006.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-159929-02), room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC. 20044. Alternatively, taxpayers may submit electronic comments directly to the IRS Internet site at www.irs.gov/regs or the Federal eRulemaking Portal at www.regulations.gov (IRS-REG-159929-02).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Dale Collinson, (202) 622-3900 (not a toll free number); concerning the submission of comments, or a request for a public hearing, Kelly Banks (Kelly.D.Banks@irs.counsel.treas.gov).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

Temporary regulations in the Rules and Regulations section of this issue of the Federal Register amend the Income Tax Regulations (26 CFR Part 1) relating to sections 860A, 860G, 863, 1441, and 1442 of the Internal Revenue Code (Code). The temporary regulations provide rules relating to the recognition and sourcing of income

and related withholding issues associated with a Real Estate Mortgage Investment Conduit (REMIC) residual interest that is allocated to a foreign person, including a foreign partner in a domestic partnership. The text of the temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that the regulations do not impose any new or different requirements on small entities. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public

inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Dale Collinson, Office of the Associate Chief Counsel (Financial Institutions and Products). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1--INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

§ 1.860A-1 also issued under 26 U.S.C. 860G(b) and 860G(e). * * *

Par. 2. In §1.860A-1, paragraph (b)(5) is added to read as follows:

§1.860A-1 Effective dates and transition rules.

* * * * *

(b) * * *

(5) [The text of the proposed amendment to §1.860A-1(b)(5) is the same as the text of §1.860A-1T(b)(5) published elsewhere in this issue of the **Federal Register**].

Par. 3. In §1.860G-3, paragraph (b) is added to read as follows:

§1.860G-3 Treatment of foreign persons.

* * * * *

(b) [The text of the proposed amendment to §1.860G-3(b) is the same as the text of §1.860G-3T(b) published elsewhere in this issue of the **Federal Register**].

Par. 4. Section 1.863-1 is amended as follows:

1. The paragraph heading for paragraph (e) is revised.
2. The text of paragraph (e) is redesignated as (e)(1).
3. A new paragraph heading for paragraph (e)(1) is added.
4. A new paragraph (e)(2) is added.
5. The last sentence of paragraph (f) is revised and a new sentence is added to the end.

The revisions and additions read as follows:

§1.863-1 Allocation of gross income under section 863(a).

* * * * *

(e) Residual interest in a REMIC--(1) REMIC inducement fees.* * *

(2) [The text of the proposed amendment to §1.863-1(e)(2) is the same as the text of §1.863-1T(e)(2) published elsewhere in this issue of the **Federal Register**].

(f) [The text of proposed amendment to §1.863-1(f) is the same as the text of §1.863-1T(f) published elsewhere in this issue of the **Federal Register**].

Par. 5. Section 1.1441-2 is amended by adding paragraphs (b)(5) and (d)(4) and a sentence to the end of paragraph (f) to read as follows:

§1.1441-2 Amounts subject to withholding.

* * * * *

(b) * * *

(5) [The text of the proposed amendment to §1.1441-2(b)(5) is the same as the text of §1.1441-2T(b)(5) published elsewhere in this issue of the **Federal Register**.]

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(d) * * *

(4) [The text of the proposed amendment to §1.1441-2(d)(4) is the same as the text of §1.1441-2T(d)(4) published elsewhere in this issue of the **Federal Register**.]

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(f) [The text of the proposed amendment to §1.1441-2T(f)(1) is the same as the text of §1.1441-2T(f)(1)]

published elsewhere in this issue of the **Federal Register**.

Mark E. Matthews

Deputy Commissioner for Services and Enforcement.